STATE OF MICHIGAN

COURT OF APPEALS

GILBERT CHARLES VANPOPERIN and DEVELOPMENT ENGINEERING CO., Plaintiffs/Counter-Defendants-Appellants,	UNPUBLISHED May 30, 2006
v	No. 265168 Macomb Circuit Court
VINCENT DILORENZO, ANGELA TINERVIA, and D & T CONSTRUCTION CO., Defendants/Counter-Plaintiffs-Appellees.	LC No. 2002-004858-CK

Before: White, P.J., Whitbeck, C.J., and Davis, J.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendants under MCR 2.116(C)(8) on the basis that the partnership agreement under which plaintiffs sought to recover was void. We affirm.

In 1987, plaintiff Gilbert Van Poperin, defendant Vincent DiLorenzo, and Joe Tienervia formed plaintiff Development Engineering Company (DEC), a partnership. Van Poperin, a licensed engineer and surveyor, held a 50 percent interest in DEC and DiLorenzo and Tenervia, who were unlicensed, each held a 25 percent interest. The purpose of the partnership was for Van Poperin to provide engineering services, on behalf of DEC, to entities controlled by DiLorenzo. In 2002, plaintiffs initiated an action against defendants for breach of the partnership agreement. Defendants moved for summary disposition under MCR 2.116(C)(8) asserting that the partnership agreement was unenforceable because the partnership was formed in violation of MCL 339.2010. The trial court initially denied defendants' motion stating that it was "yet to be seen whether the formation of the partnership agreement was in fact illegal." Defendants moved for reconsideration and, upon reconsideration, the trial court agreed with defendants and granted defendants' motion for summary disposition.

Plaintiffs contend that the trial court erred in concluding that the partnership agreement was unenforceable. We disagree.

This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(8). *Badiee v Brighton Area Schools*, 265 Mich App 343, 351; 695 NW2d

521 (2005). A motion under MCR 2.116(C)(8) should be granted only where the claim is "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Further, the interpretation and application of a statute is a question of law this Court reviews de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

MCL 339.2010 provides in pertinent part:

> (1) A firm may engage in the practice of architecture, professional engineering, or professional surveying in this state, if not less than 2/3 of the principals of the firm are licensees.
>
> (2) However, a nonlicensed principal and the principal's firm shall apply for and receive an approval from the department to engage in the practice of architecture, professional engineering, or professional surveying, if the conduct of the firm and its principals comply with rules promulgated by the department.

A "firm" includes a partnership. MCL 339.2001(b). Thus, MCL 339.2010 clearly prohibits a partnership from engaging in the practice of professional engineering where, as here, less than two-thirds of the partners are licensed.

A partnership agreement "must be construed in the light of the circumstances under which it was made and of the purpose that the parties sought to effectuate." *Wiltse v Schaeffer*, 327 Mich 272, 282; 42 NW2d 91 (1950). The partnership agreement was founded on an act that is unambiguously prohibited by MCL 339.2010; namely, the partnership's act of engaging in professional engineering services. And, "[c]ontracts founded on acts prohibited by a statute, or contracts in violation of public policy, are void." *Michelson v Voison*, 254 Mich App 691, 694; 658 NW2d 188 (2003), citing *Maids Int'l, Inc v Saunders, Inc*, 224 Mich App 508, 511; 569 NW2d 857 (1997). Thus, the partnership agreement is unenforceable as a matter of law. We acknowledge that MCL 339.602, which prescribes the penalties for a violation of MCL 339.2010, does not expressly provide that a partnership agreement that violates MCL 339.2010 is void. However, our Supreme Court has held that an agreement may be declared void even though the statute under which the agreement was formed does not so provide. See *Kukla v Perry*, 361 Mich 311, 324; 105 NW2d 176 (1960).

Generally, courts must provide competent parties the "utmost liberty" to engage in contractual relations. *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 54; 672 NW2d 884 (2003), quoting *Terrien v Zwitt*, 467 Mich 56, 71; 648 NW2d 602 (2002). However, a court has a duty to dismiss an action if the only basis on which the action can rest is an agreement that is invalid because it is prohibited by law or contrary to public policy. *Mulliken v Naph-Sol Refining Co*, 302 Mich 410, 413; 4 NW2d 707 (1942); *Meek v Wilson*, 283 Mich 679, 689; 278 NW 731 (1938). Thus, because the partnership agreement is unenforceable as a matter of law, the circuit court did not err in granting summary disposition in favor of defendants. *Rigo v De Gutis*, 341 Mich 126, 130; 67 NW2d 224 (1954).

Plaintiffs next contend that the circuit court erred in failing to balance the illegality of the agreement with the severity of the penalty or forfeiture that would result from the court's failure to enforce the agreement. We disagree.

Plaintiffs cite *Terpstra v Grand Mobile Trailer Sales*, 352 Mich 546, 550-552; 90 NW2d 504 (1958), in support of their argument that the trial court should have applied a balancing test to determine whether plaintiffs were entitled to recover under the partnership regardless of whether the agreement violated MCL 339.2010. However, in *Waldron v Drury's Van Lines, Inc*, 1 Mich App 601, 608; 137 NW2d 743 (1965), this Court read the majority opinion in *Terpstra* as indicating that it was limited to the facts of the case and, because *Terpstra* is factually distinguishable from the instant case, it is not controlling. In addition, unlike the defendant in *Terpstra*, plaintiffs were not innocently threatened with unjust loss through the voiding of the agreement. Plaintiff VanPoperin is a licensed engineer and is charged with knowledge that the agreement was unenforceable because it was in violation of MCL 339.2010. Therefore, we conclude that the circuit court did not err in failing to apply a balancing test.

Plaintiffs next contend that even if the partnership agreement is unenforceable, Van Poperin is entitled to recover under the doctrine of *quantum meruit* for the professional engineering services he provided. We disagree.

Quantum meruit allows a party to recover the reasonable value of services rendered. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 551; 487 NW2d 499 (1992). Van Poperin seeks compensation for the professional engineering services he performed; however, those services were performed pursuant to a contract with DEC, which was in violation of MCL 339.2010. Thus, we reject VanPoperin's request for equitable relief because any such relief would allow equity to be used to defeat the statutory ban on a firm like DEC engaging in the practice of professional engineering. See *Stokes v Millen Roofing Co*, 466 Mich 660, 673; 649 NW2d 371 (2002). Similarly, we reject Van Poperin's argument that he is entitled to an accounting because where the agreement of a partnership violates public policy or state law, the equitable remedy of accounting will be denied. *Rigo, supra.*

Plaintiffs also contend that, upon reconsideration, the circuit court erred in reversing its earlier ruling denying defendants' motion for summary disposition. We disagree.

This Court reviews a circuit court's decision on a motion for reconsideration for an abuse of discretion. *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003). After granting defendants' motion for reconsideration, the circuit court concluded that the partnership agreement was unenforceable and, therefore, defendants were entitled to judgment as a matter of law. Because the circuit court's conclusion on reconsideration was correct, the circuit court did not err in reversing its order denying defendants' motion for summary disposition.

Finally, plaintiffs contend that the circuit court erred in allowing defendants to raise the defense of illegality because defendants failed to plead illegality as an affirmative defense. We disagree.

The circuit court was free to take notice of the illegality defense although it was raised belatedly. In *Meek, supra* at 689-690, our Supreme Court recognized that it is the duty of the court to take notice of illegality *sua sponte*:

> It would be anomalous, indeed, if this court were required to enforce a contract which the record discloses to be against public policy and in contravention of the

> purposes and provisions of a statute. The rule that a contract against public policy is unenforceable is for the protection of the public at large, and this protection should not be lost because of the lack of diligence of a party to the suit. [Citations omitted.]

See also *Gibson v Martin*, 308 Mich 178, 181; 13 NW2d 252 (1944). Thus, we conclude that defendants' failure to plead illegality as an affirmative defense did not preclude consideration of this issue.

Affirmed.

/s/ Helene N. White
/s/ William C. Whitbeck
/s/ Alton T. Davis